

allman

DAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: D. ROBINSON
W. HAWKINS, et al.)
Serial No. 09/782,331) Art Unit: 3742
Filed: February 13, 2001) Confirmation: 9813
For: LIMITED-ANGLE)
FREQUENCY-DISTANCE)
RESOLUTION RECOVERY)
IN NUCLEAR MEDICINE)
IMAGING)
Date of Last Office Action:)
June 2, 2004)
Attorney Docket No.:) Cleveland, OH 44114
PKRZ 2 00655) September 30, 2004

RECEIVED

OCT 07 2004

OFFICE OF PETITIONS

SUBMISSION OF RESPONSE AND
REQUEST FOR FILING DATE

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On June 11, 2004, the applicants faxed the enclosed Request for Reconsideration (Exhibit 1) to the U.S. Patent Office at (703) 872-9306, the number identified the June 2, 2004 Office Action as the number to which submissions should be faxed (Exhibit 2).

Our facsimile machine provided a confirmation that the 3 pages were in fact transmitted successfully (Exhibit 3). By way of background, the destination number on the fax result report is to be interpreted as follows. In Exhibit 3, the first three digits (595) is an access code to the fax machine. The next digit "9" is for an outside line. The next digit "1" is to designate long distance. The next ten digits are the telefacsimile number.

When no Office Action had been received by the end of the three-month period, the undersigned telephoned Examiner Robinson to inquire when one might be expected. He indicated that there was no response in the system. The applicants thereupon faxed a courtesy of the amendment to Examiner Robinson and again faxed the Request for

Reconsideration to the (703) 872-9306 number (Exhibit 4). The fax machine transmission result report again reported that both faxes were satisfactorily transmitted. (Exhibit 5).

When no automated reply was received from the Patent Office, the applicants faxed the entire package again with a specific request for a confirmation of receipt of fax (Exhibit 6). The transmission result report (Exhibit 7) again shows that this paper was successfully transmitted.

The applicants telephoned Examiner Robinson a few days later to inquire if the faxes had been received. He advised that the courtesy copy had in fact been received. He checked to see if the Request for Reconsideration of Exhibit 1 was in the electronic system and reported that it was not. However, he indicated that it sometimes takes a while for these materials to be entered into the system.

On September 28, 2004, we telephoned Examiner Robinson to inquire if the Request for Reconsideration was yet in the system. The message was left on his voice mail. On September 29, 2004, Examiner Robinson telephoned to report that it was not.

The applicants include a Declaration of Hilary McNulty, who signed the three certificates of faxing, declaring that she did in fact fax Exhibit 1 to the Patent Office on the dates indicated on the certificates of faxing (Exhibit 8).

The applicants are very disappointed that despite thrice submitting the Request for Reconsideration of Exhibit 1, it is still not in the U.S. Patent Office system and available for the Examiner to officially consider. The applicants hereby request that the Request for Reconsideration of Exhibit 1 be entered and that it be accorded the filing date of June 11, 2004.

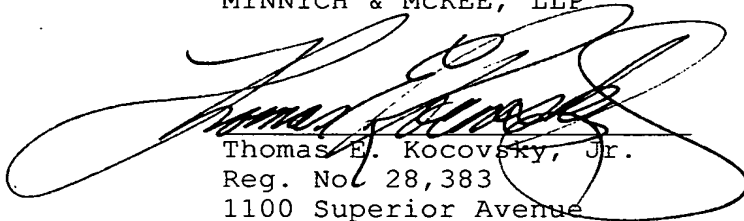
In the alternative, the applicants ask that the Request for Reconsideration be accorded the filing date of September 2, 2004. If for any reason this request is denied, the applicants request that the Request for Reconsideration be granted the mailing date of this communication,

i.e., September 30, 2004, and that a one-month extension of time fee be charged to Deposit Account No. 06-0308.

Please charge any petition fees which may be due in conjunction with this request to Deposit Account No. 06-0308.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2518
(216) 861-5582

CERTIFICATE OF MAILING

I hereby certify that this **SUBMISSION OF RESPONSE AND REQUEST FOR FILING DATE W/EXHIBITS 1-3** in connection with U.S. Patent Application Serial No. 09/782,331 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22213-1450 on this 30th day of September, 2004.

By: Helary McNulty

FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OHIO 44114-2518
(216) 861-5582

Date: June 11, 2004

To: U.S. Patent Office

Attention: Examiner D. ROBINSON

Facsimile No: (703) 872-9306

From: Thomas E. Kocovsky, Jr.

Re: 09/782,331; Filed 02/13/2001

Attorney Docket No.: PKRZ 2 00655

Total number of pages (including this cover sheet): 3

Please call us immediately at (216) 861-5582 if the telecopy you receive is incomplete or illegible. Our facsimile numbers are (216) 241-1666 and (216) 241-5147.

Comments:

3 pp: 1 pp Fax Cover Sheet
 2 pp Request for Reconsideration

RECEIVED
OCT 07 2004
OFFICE OF PETITIONS

The documents accompanying this facsimile transmission include information from the firm of Fay, Sharpe, Fagan, Minnich & McKee, LLP that might be legally privileged and/or confidential. The information is intended for the use of only the individual or entity named on this cover sheet. If you are not the intended recipient, any disclosure, copying, or distribution of these documents, or the taking of any action based on the contents of this transmission, is prohibited. If you have received this transmission in error, these documents should be returned to this firm as soon as possible, and we ask that you notify us immediately by telephone so we can arrange for their return to us without cost to you.

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: D. ROBINSON
W. HAWKINS, et al.)	
)	
Serial No. 09/782,331)	Art Unit: 3742
)	
Filed: February 13, 2001)	Confirmation: 9813
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For: LIMITED-ANGLE)	
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IN NUCLEAR MEDICINE)	
IMAGING)	
)	
Date of Last Office Action:)	
June 2, 2004)	
)	
Attorney Docket No.:)	Cleveland, OH 44114
PKRZ 2 00655)	June 11, 2004

REQUEST FOR RECONSIDERATION

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The applicants hereby request reconsideration of the requirement to cancel dependent claims 26 and 28.

The Office Action of June 2, 2004 incorrectly states that claims 26 and 28 are drawn to a non-elected "invention". To the contrary, they are directed to a non-elected "species". Claim 26 depends from allowed generic claim 24 and claim 28 depends from allowed generic claim 12. As stated in the Examiner's Election of Species requirement of April 11, 2003:

Upon the allowance of a generic claim, the applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 CFR 1.141.

It will be seen that allowed claim 12 is generic. That is, it is not specific to either the continuous rotate mode of Species A or the stop-and-shoot mode of Species B. Similarly,

allowed claim 24 is generic in that it is not specific to either the continuous rotate mode of Species A or the stop-and-shoot mode of Species B.

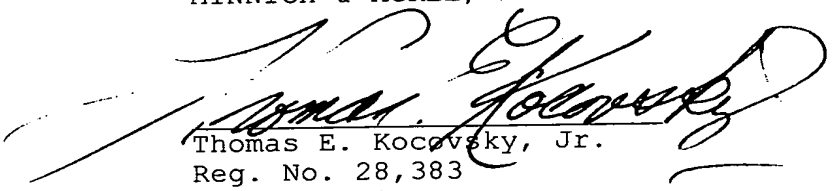
Because claims 26 and 28 depend from allowed generic claims, it is submitted that the applicants are entitled to allowance of claims 26 and 28 (37 CFR 1.144).

It should be noted that the June 2, 2004 Office Action improperly lists MPEP § 821.01 as a basis for requiring cancellation. MPEP § 821.01 is limited to Restriction Requirements requiring restriction between patentably distinct inventions. By contrast, the present application was subject to an Election of Species requirement, to which MPEP § 821.01 does not apply.

For the reasons set forth above, an early withdrawal of the requirement for the cancellation of claims 26 and 28 is requested. An early allowance of claims 1-17 and 22-28 is requested.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2518
(216) 861-5582

CERTIFICATE OF FAXING

I hereby certify that this **REQUEST FOR RECONSIDERATION** in connection with U.S. Patent Application Serial No. 09/782,331 is being transmitted by telefacsimile to Attn: Examiner D. Robinson at Telephone No. 703/872-9306 on this 11th day of June, 2004.

By: Milary McNulty

Art Unit: 3742

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DANIEL ROBINSON
PATENT EXAMINER

dlr



Exhibit 2

* * * Transmission Result Report (MemoryTX) (Jun.11. 2004 1:40PM) * * *

1)
2)

ite/Time: Jun.11. 2004 1:39PM

le	Destination	Pg (s)	Result	Page Not Sent
24 Memory TX	#595917038729306	P. 3	OK	

Exhibit 3

Reason for error
E.1) Hang up or line fail
E.3) No answer

E.2) Busy
E.4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OHIO 44114-2518
(216) 861-5582

Date: June 11, 2004

To: U.S. Patent Office

Attention: Examiner D. ROBINSON

Facsimile No: (703) 872-9306

From: Thomas E. Kocovsky, Jr.

Re: 09/782,331; Filed 02/13/2001

Attorney Docket No.: PKRZ 2 00655

Total number of pages (including this cover sheet): 3

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Comments:

3 pp: 1 pp Fax Cover Sheet
2 pp Request for Reconsideration

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Exhibit 4

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP

PATENT TRADEMARK AND COPYRIGHT LAW
1100 SUPERIOR AVENUE
SEVENTH FLOOR
CLEVELAND, OHIO 44114-2579
TELEPHONE (216) 861-5582
FAX (216) 241-1666 AND (216) 241-5147

DATE:

2 Sept 2004

TO:

Ex Dan ROBINSON

ATTN.:

FACSIMILE NO.:

703-308-7764 & 703-872-9306

FROM:

TOM KOZOLUSKY

RE:

Our Ref.: SN. 09 / 782,331

TOTAL PAGES:

(including cover sheet)

5

Please call us immediately at (216) 861-5582 if this transmission is incomplete or illegible.

Comments

Ex Robinson,

Here's another copy of the response that we filed June 11, 2004 that does not appear in the Pat. Office Records.

Because today is the 3-month date, this response is to be considered as THE RESPONSE and entered into the PTO records as timely filed.

Tom Kozolusky

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* * * Transmission Result Report (MemoryTX) (Jun.11. 2004 1:40PM) * * *

1)
2)

Date/Time: Jun.11. 2004 1:39PM

File No. Mode	Destination	Pg (s)	Result	Page Not Sent
1224 Memory TX	#595917038729306	P. 3	OK	

Reason for error
E.1) Hang up or line fail
E.3) No answer

E.2) Busy
E.4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
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Attorney Docket No.: PKRZ 2 00655

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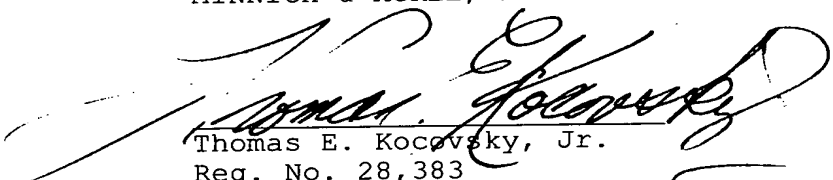
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By: Kilary McNulty

* * * Transmission Result Report (MemoryTX) (Sep. 2. 2004 2:06PM) * * *

1) Fay Sharpe
2)

Date/Time: Sep. 2. 2004 2:04PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2158 Memory TX	#245917038729306	P. 5	OK	

Exhibit 5

Reason for error
E.1) Hang up or line fail
E.3) No answerE.2) Busy
E.4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP

PATENT TRADEMARK AND COPYRIGHT LAW
1100 SUPERIOR AVENUE
SEVENTH FLOOR
CLEVELAND, OHIO 44114-2579
TELEPHONE (216) 861-5582
FAX (216) 241-1666 AND (216) 241-5147

DATE: 2 Sept 2004
 TO: Ex. Dan Robinson
 ATTN:
 FACSIMILE NO.: 703-308-7764 & 703-872-9306
 FROM: Tom Kozlowsky
 RE: Our Ref.: SN. 09/782,331
 TOTAL PAGES: (including cover sheet) 5

Please call us immediately at (216) 861-5582 if this transmission is incomplete or illegible.

Comments

Ex. Robinson,
Here's another copy of the response
that we filed June 11, 2004. It has does
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Tom Kozlowsky
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* * * Transmission Result Report (MemoryTX) (Sep. 2. 2004 2:05PM) * * *

1) Fay Sharpe
2)

Date/Time: Sep. 2. 2004 2:03PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2157 Memory TX	#245917033087764	P. 5	OK	

Reason for error

E.1) Hang up or line fail
E.3) No answerE.2) Busy
E.4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP

PATENT TRADEMARK AND COPYRIGHT LAW
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TELEPHONE (216) 861-5582
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DATE:

TO:

ATTN:

FACSIMILE NO.:

FROM:

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CLEVELAND, OHIO 44114-2518
(216) 861-5582

Date: September 2, 2004

To: U.S. Patent Office

Attention: Examiner D. ROBINSON

Facsimile No: (703) 872-9306

From: Thomas E. Kocovsky, Jr.

Re: 09/782,331; Filed 02/13/2001

Attorney Docket No.: PKRZ 2 00655

Total number of pages (including this cover sheet): 6

Please call us immediately at (216) 861-5582 if the telecopy you receive is incomplete or illegible. Our facsimile numbers are (216) 241-1666.

Comments:

6 pp: We faxed this document earlier today and on June 11, 2004.

We have not as yet received a Confirmation of Receipt of Fax from the US PTO.

Please fax a Confirmation of Receipt of Fax to us as soon as possible (216/241-1666).

Thank You.

Exhibit 6

The documents accompanying this facsimile transmission include information from the firm of Fay, Sharpe, Fagan, Minnich & McKee, LLP that might be legally privileged and/or confidential. The information is intended for the use of only the individual or entity named on this cover sheet. If you are not the intended recipient, any disclosure, copying, or distribution of these documents, or the taking of any action based on the contents of this transmission, is prohibited. If you have received this transmission in error, these documents should be returned to this firm as soon as possible, and we ask that you notify us immediately by telephone so we can arrange for their return to us without cost to you.

* * * Transmission Result Report (MemoryTX) (Sep. 2. 2004 2:06PM) * * *

1) Fay Sharpe
2)

Date/Time: Sep. 2. 2004 2:04PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
215.8 Memory TX	#245917038729306	P. 5	OK	

Reason for error
E. 1) Hang up or line fail
E. 3) No answerE. 2) Busy
E. 4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP

PATENT TRADEMARK AND COPYRIGHT LAW
1100 SUPERIOR AVENUE
SEVENTH FLOOR
CLEVELAND, OHIO 44114-2579
TELEPHONE (216) 861-5582
FAX (216) 241-1666 and (216) 241-5147

DATE: 2 Sept 2004
 TO: Mr. Van ROBINSON
 ATTN.:
 FACSIMILE NO.: 703-308-7764 & 703-872-9306
 FROM: TOM KROVSKY
 RE: Our Ref.: SN. 09/782 331
 TOTAL PAGES: (including cover sheet) 5

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1) Fay Sharpe
2)

Date/Time: Sep. 2. 2004 2:03PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
215.7 Memory TX	#245917033087764	P. 5	OK	

Reason for error
mm. 1) Hang up or line fail
m. 3) No answerE. 2) Busy
E. 4) No facsimile connection

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP

PATENT TRADEMARK AND COPYRIGHT LAW
1100 SUPERIOR AVENUE
SEVENTH FLOOR
CLEVELAND, OHIO 44114-2579
TELEPHONE (216) 861-5582
FAX (216) 241-1666 and (216) 241-5147

DATE: 2 Sept 2004
 TO: Eric Van Robinson
 ATTN:
 FACSIMILE NO.: 703-308-7764 / 703-872-9306
 FROM: Tom Kozlowsky
 RE: Our Ref.: SN. 09 / 782 331
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record as timely filed.

Tom Kozlowsky
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Date/Time: Jun.11. 2004 1:39PM

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FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OHIO 44114-2518
(216) 861-5582

Date: June 11, 2004

To: U.S. Patent Office

Attention: Examiner D. ROBINSON

Facsimile No: (703) 872-9306

From: Thomas E. Kocovsky, Jr.

Re: 09/782,331; Filed 02/13/2001

Attorney Docket No.: PKRZ 2 00655

Total number of pages (including this cover sheet): 3

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Comments:

3 pp: 1 pp Fax Cover Sheet
2 pp Request for Reconsideration

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: D. ROBINSON
W. HAWKINS, et al.)	
)	
Serial No. 09/782,331)	Art Unit: 3742
)	
Filed: February 13, 2001)	Confirmation: 9813
)	
For: LIMITED-ANGLE)	
FREQUENCY-DISTANCE)	
RESOLUTION RECOVERY)	
IN NUCLEAR MEDICINE)	
IMAGING)	
)	
Date of Last Office Action:)	
June 2, 2004)	
)	
Attorney Docket No.:)	Cleveland, OH 44114
PKRZ 2 00655)	June 11, 2004

REQUEST FOR RECONSIDERATION

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The applicants hereby request reconsideration of the requirement to cancel dependent claims 26 and 28.

The Office Action of June 2, 2004 incorrectly states that claims 26 and 28 are drawn to a non-elected "invention". To the contrary, they are directed to a non-elected "species". Claim 26 depends from allowed generic claim 24 and claim 28 depends from allowed generic claim 12. As stated in the Examiner's Election of Species requirement of April 11, 2003:

Upon the allowance of a generic claim, the applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 CFR 1.141.

It will be seen that allowed claim 12 is generic. That is, it is not specific to either the continuous rotate mode of Species A or the stop-and-shoot mode of Species B. Similarly,

allowed claim 24 is generic in that it is not specific to either the continuous rotate mode of Species A or the stop-and-shoot mode of Species B.

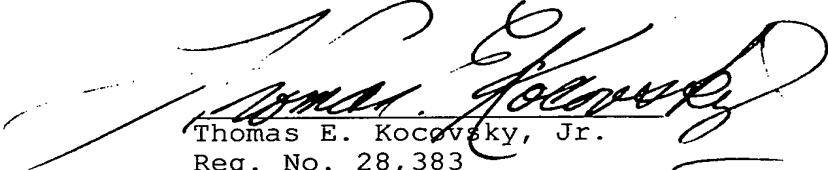
Because claims 26 and 28 depend from allowed generic claims, it is submitted that the applicants are entitled to allowance of claims 26 and 28 (37 CFR 1.144).

It should be noted that the June 2, 2004 Office Action improperly lists MPEP § 821.01 as a basis for requiring cancellation. MPEP § 821.01 is limited to Restriction Requirements requiring restriction between patentably distinct inventions. By contrast, the present application was subject to an Election of Species requirement, to which MPEP § 821.01 does not apply.

For the reasons set forth above, an early withdrawal of the requirement for the cancellation of claims 26 and 28 is requested. An early allowance of claims 1-17 and 22-28 is requested.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2518
(216) 861-5582

CERTIFICATE OF FAXING

I hereby certify that this **REQUEST FOR RECONSIDERATION** in connection with U.S. Patent Application Serial No. 09/782,331 is being transmitted by telefacsimile to Attn: Examiner D. Robinson at Telephone No. 703/872-9306 on this 11th day of June, 2004.

By: Kilary McNulty

* * * Transmission Result Report (MemoryTX) (Sep. 2. 2004 4:39PM) * * *

1) Fay Sharpe
2)

Date/Time: Sep. 2. 2004 4:37PM

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Exhibit 7

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1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OHIO 44114-2518
(216) 861-5582

Date: September 2, 2004To: U.S. Patent OfficeAttention: Examiner D. ROBINSONFacsimile No: (703) 872-9306From: Thomas E. Kocovsky, Jr.Re: 09/782,331; Filed 02/13/2001Attorney Docket No.: PKRZ 2 00655

Total number of pages (including this cover sheet):

6

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Comments:

6 pp: We faxed this document earlier today and on June 11, 2004.

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Thank You.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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RESOLUTION RECOVERY)	
IN NUCLEAR MEDICINE)	
IMAGING)	
Date of Last Office Action:)	
June 2, 2004)	
Attorney Docket No.:)	Cleveland, OH 44114
PKRZ 2 00655)	September 30, 2004

Exhibit 8

DECLARATION OF HILARY McNULTY

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Hilary McNulty, declare that I did in fact fax the Request for Reconsideration of Exhibit 1 to the U.S. Patent and Trademark Office at (703) 872-9306 on June 11, 2004, and again two more times on September 2, 2002.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

9-30-2004
Date

Hilary McNulty
Hilary McNULTY